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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68450; File No. SR-BYX-2012-024)

December 17, 2012

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 6, 2012, BATS Y-Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members⁵ and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). Changes to the fee schedule pursuant to this proposal will be effective upon filing.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

The text of the proposed rule change is available at the Exchange's website at <http://www.batstrading.com>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 14, 2012, the Exchange filed with the Commission a proposed rule change to establish on a one-year pilot basis the Retail Price Improvement ("RPI") Program (the "Program").⁶ The Program seeks to establish a venue for the execution of retail orders with greater price competition and transparency than existing execution arrangements. The Exchange filed an amendment to the proposal on November 13, 2012, proposing to make various minor amendments to the Proposal, including an amendment to limit the Program to a group of up to 25 securities for the first 90 days of the pilot period, and to gradually expand the program on a monthly basis for the remainder of the pilot period.

The Program establishes a new class of market participants (Retail Member Organizations) and two new order types (Retail Orders and Retail Price Improvement Orders).

⁶ See Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR-BYX-2012-019) (the "Proposal").

Retail Member Organizations will submit Retail Orders to the Exchange. All Exchange Users⁷ will be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (“Protected NBB”) or the national best offer that is a Protected Quotation (“Protected NBO”, and together with the Protected NBB, the “Protected NBBO”).⁸ Such price improving interest can be entered either in the form of Retail Price Improvement Orders (or “RPI Orders”) or as other non-displayed interest.

The Commission recently approved the Program’s operation on a pilot basis.⁹ Accordingly, the Exchange proposes to modify its fee schedule effective December 6, 2012, in order to adopt pricing for the Program, which will be applicable to the first set of securities selected by the Exchange for inclusion in the Program.¹⁰

The Exchange proposes to provide a rebate to Retail Member Organizations for executions of their Retail Orders and to charge Users a fee for executions of their orders against

⁷ A “User” is defined in BYX Rule 1.5(cc) as any member or sponsored participant of the Exchange who is authorized to obtain access to the System.

⁸ The term Protected Quotation is defined in BYX Rule 1.5(t) and has the same meaning as is set forth in Regulation NMS Rule 600(b)(58). The terms Protected NBB and Protected NBO are defined in BYX Rule 1.5(s). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. Generally, the Protected NBB and Protected NBO and the national best bid (“NBB”) and national best offer (“NBO”, together with the NBB, the “NBBO”) will be the same. However, a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Regulation NMS Rule 611.

⁹ See Securities Exchange Act Release No. 68303 (November 27, 2012), 77 FR 71652 (December 3, 2012) (SR-BYX-2012-019).

¹⁰ The Exchange currently plans to implement the Program on December 17, 2012. Although the Program is not yet operative, the Exchange is adopting the applicable fees in anticipation of the Program’s operation.

Retail Orders. Further, the Exchange proposes to bifurcate into “Group 1” and “Group 2” the original 20 securities selected by the Exchange to be included in the Program, and to differentiate rebates and fees between such Groups.

Group 1, as proposed, will initially include 10 securities, as follows: Apple Inc. (AAPL), SPDR S&P ETF Trust (SPY), Facebook Inc. (FB), Direxion Daily Financial Bull 3X Shares (FAS), Direxion Daily Financial Bear 3X Shares (FAZ), iShares Russell 2000 Index (IWM), Citigroup Inc. (C), General Electric Company (GE), Google Inc. (GOOG), and SPDR Gold Trust (GLD) (“Group 1 Securities”). The Exchange proposes to provide a rebate of \$0.0025 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 1 Security. Similarly, the Exchange proposes to charge \$0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order.

Group 2, as proposed, will initially include 10 securities, as follows: Sirius XM Radio Inc. (SIRI), Bank of America Corp. (BAC), Nokia Corporation-ADR (NOK), Sprint Nextel Corporation (S), Micron Technology, Inc. (MU), Ford Motor Company (F), Advanced Micro Devices, Inc. (AMD), JPMorgan Chase & Co. (JPM), Hewlett-Packard Company (HPQ), and Financial Select Sector SPDR (XLF) (“Group 2 Securities”). The Exchange proposes to provide a rebate of \$0.0010 per share for a Retail Order that removes liquidity from the BYX Exchange order book in an RPI Group 2 Security. Similarly, the Exchange proposes to charge \$0.0010 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 2 Security and is removed by a Retail Order.

As proposed, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such

Retail Orders, when removing displayed liquidity, will receive the standard rebate of \$0.0002 per share for orders that remove liquidity. Similarly, a liquidity provider that enters a displayed order that is removed by a Retail Order will be charged the standard fee for adding displayed liquidity (either \$0.0003 per share or \$0.0002 per share depending on whether such liquidity provider qualifies for tiered pricing incentives).

The Exchange is proposing the higher remove rebate and fee to add liquidity for Group 1 Securities because the Exchange believes that, while both Group 1 and Group 2 Securities attract heavy retail investor interest, liquidity providers in the over-the-counter market are generally willing to pay retail brokers higher fees for retail orders in Group 1 Securities. The Exchange's rebate for Group 1 Securities is designed to compete with such higher fees.

The Exchange currently charges a fee of \$0.0010 per share to add non-displayed liquidity to the BYX order book. As explained in the Proposal, the Exchange proposes to execute incoming Retail Orders against all available contra-side interest that will provide price improvement to the Retail Order, including non-displayed orders other than RPI Orders. In the event non-displayed interest other than an RPI Order interacts with a Retail Order, the Exchange proposes to charge the User that entered such non-displayed interest the same fee as is imposed for an RPI Order execution. As set forth above, the Exchange proposes to charge a fee of \$0.0025 per share for any Retail Price Improving Order or non-displayed order that adds liquidity to the BYX Exchange order book in an RPI Group 1 Security and is removed by a Retail Order. Accordingly, the Exchange proposes language to the existing text related to liquidity fees to make clear that any non-displayed order removed by a Retail Order will pay the applicable fee under the Retail Pricing Improvement program for such execution.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.¹¹ Specifically, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and (b)(5) of the Act,¹² in that it provides for the equitable allocation of reasonable dues, fees and other charges among issuers, and it does not unfairly discriminate between customers, issuers, brokers or dealers.

The Program is intended to increase competition among execution venues, encourage additional liquidity, and offer the potential for price improvement to retail investors. The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.¹³ The Exchange believes that it is appropriate to create a financial incentive to bring more retail order flow to a public market where it may be subject to greater competition from multiple liquidity providers.

The Exchange understands that Section 6(b)(5) of the Act¹⁴ prohibits an exchange from establishing rules that treat market participants in an unfairly discriminatory manner. However, Section 6(b)(5) of the Act does not prohibit exchange members or other broker-dealers from

¹¹ 15 U.S.C. 78f.

¹² 15 U.S.C. 78f(b)(4) and (b)(5).

¹³ See Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). See also Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's website). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

¹⁴ 15 U.S.C. 78f(b)(5).

discriminating, so long as their activities are otherwise consistent with the federal securities laws. Nor does Section 6(b)(5) of the Act require exchanges to preclude discrimination by broker-dealers. Broker-dealers commonly differentiate between customers based on the nature and profitability of their business. The differentiation established by the Exchange in connection with the Program is not designed to permit unfair discrimination, but instead to promote a competitive process around retail executions such that retail investors would receive better prices than they currently do through bilateral internalization arrangements.

The Exchange believes that the proposed rebates for Retail Orders are fair and equitable in that they are designed to compete with internalization arrangements established by executing broker-dealers. The Exchange further believes that differentiation between the two types of securities (Groups 1 and 2) is fair and equitable and not unreasonably discriminatory because this differentiation is based on the Exchange's belief as to relative economic value of order flow, namely, that order flow in Group 1 Securities is more valuable, and in turn, is rewarded with better economic arrangements by broker-dealers, than is order flow in Group 2 Securities.

As set forth above, in addition to establishing pricing for orders particularly designated to participate in the Program, namely Retail Orders and RPI Orders, the proposal will impact non-displayed orders that interact with Retail Orders in Group 1 Securities in that such orders will be charged a higher fee than they do today. The Exchange believes that the proposal to treat non-displayed orders differently depending on the parties with whom they interact is consistent with Section 6(b)(5) of the Act,¹⁵ which requires that the rules of an exchange are not designed to permit unfair discrimination. The Exchange believes that such a differential pricing structure for non-displayed orders is not unfairly discriminatory. As stated in the NYSE RLP Approval

¹⁵ 15 U.S.C. 78f(b)(5).

Order, the “Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.”¹⁶ The Exchange’s proposed differential pricing structure for non-displayed orders recognizes that not only are liquidity providers willing to provide better prices to retail investors, they are also willing to pay higher fees to trade certain securities with retail investors and, hence, raises substantively identical policy considerations as the rules approved by the Commission in the NYSE RLP Approval Order, which account for the difference of assumed information and sophistication level between different trading participants by providing Retail Orders access to better execution prices as well as more favorable access fees.

Finally, as set forth above, the rebates for Retail Orders described above will not apply to Type 2 Retail Orders that remove displayed liquidity from the BYX Exchange order book. Instead, such Retail Orders, when removing displayed liquidity, will receive the standard rebate of \$0.0002 per share for orders that remove liquidity. Type 2 Retail Orders under the Program are designated by the entering Member as willing to remove all available liquidity, after

¹⁶ See Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673, at 40679-40680 (July 10, 2012) (SR-NYSE-2011-55; SR-NYSEAmex-2011-84) (citing Concept Release on Equity Market Structure and approval of an options exchange program related to price improvement for retail orders). Certain options exchanges deploy this same rationale today through pricing structures that vary for a trading participant based on the capacity of the contra-side trading participant. See, e.g., Securities Exchange Act Release No. 63632 (January 3, 2011), 76 FR 1205 (January 7, 2011) (SR-BATS-2010-038) (notice of filing and immediate effectiveness of proposal to modify fees for BATS Options, including liquidity rebates that are variable depending on the capacity of the contra-party to the transaction; see also Securities Exchange Act Release No. 67171 (June 8, 2012), 77 FR 35732 (June 14, 2012) (SR-NASDAQ-2012-068) (notice of filing and immediate effectiveness of proposal to modify fees for the NASDAQ Options Market, including certain fees and rebates that are variable depending on the capacity of the contra-party to the transaction).

receiving any available price improving liquidity, including removing the Exchange's displayed best bid or offer. The Exchange believes that Type 2 Retail Orders that remove displayed liquidity should receive the same pricing as any other order that removes displayed liquidity from the Exchange and that applying its existing pricing structure for any executions of Retail Orders against displayed quotations is fair and equitable and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act¹⁷ and Rule 19b-4(f)(2) thereunder,¹⁸ the Exchange has designated this proposal as establishing or changing a due, fee, or other charge applicable to the Exchange's Members and non-members, which renders the proposed rule change effective upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

¹⁷ 15 U.S.C. 78s(b)(3)(A)(ii).

¹⁸ 17 CFR 240.19b-4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BYX-2012-024 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BYX-2012-024. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, D.C. 20549-1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of BYX. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BYX-2012-024, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁹

Kevin M. O'Neill
Deputy Secretary

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¹⁹ 17 CFR 200.30-3(a)(12).